

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GREGORY COLLINS,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:08cv452
vs.	:	
	:	Chief Judge Susan J. Dlott
WARDEN, LONDON CORRECTIONAL	:	
INSTITUTION,	:	
	:	
Respondent(s).	:	

ORDER

The Court has reviewed the Report and Recommendation of United States Magistrate Judge Timothy S. Hogan filed on April 24, 2009 (Doc. 9), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired May 14, 2009, hereby ADOPTS said Report and Recommendation.

Accordingly, respondent's motion to dismiss (Doc. 8) is **GRANTED**, and petitioner's petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254 (Doc. 3) is **DISMISSED** with prejudice.

A certificate of appealability will not issue with respect to this Order adopting the Report and Recommendation to dismiss the claim alleged in Ground One of the petition on procedural statute of limitations grounds, because under the applicable two-part standard established in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), "jurists of reason" would not find it debatable whether this Court is correct in its procedural ruling or whether petitioner has stated a viable constitutional claim in that ground for relief. A certificate of appealability also will not issue

with respect to this Order adopting the Report and Recommendation to dismiss the remaining claims alleged in Grounds Two through Four of the petition, addressed on the merits therein, in the absence of a substantial showing that petitioner has stated a “viable claim of the denial of a constitutional right” or that the issues presented are “adequate to deserve encouragement to proceed further.” *See Slack*, 529 U.S. at 475 (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)); *see also* 28 U.S.C. § 2253 (c); Fed. R. App. P. 22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Order adopting the Report and Recommendation will not be taken in “good faith,” and therefore **DENIES** petitioner leave to proceed on appeal *in forma pauperis* upon showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

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s/Susan J. Dlott

Chief Judge Susan J. Dlott
United States District Court